

(c) There is a shortage of candidates for the position to be filled.

*Inequity to an employee* involves situations where a position is upgraded without change in the employee's duties or responsibilities, or where discrimination or administrative error prevented an employee from reaching a higher grade.

*Nontemporary appointment* means any appointment other than a temporary appointment pending establishment of a register (TAPER) or a temporary or excepted appointment not to exceed 1 year or less.

#### § 300.603 Coverage.

(a) *Coverage.* This subpart applies to advancement to a General Schedule position in the competitive service by any individual who within the previous 52 weeks held a General Schedule position under nontemporary appointment in the competitive or excepted service in the executive branch, unless excluded by paragraph (b) of this section.

(b) *Exclusions.* The following actions may be taken without regard to this subpart but must be consistent with all other applicable requirements, such as qualification standards:

(1) Appointment based on selection from a competitive examination register of eligibles or under a direct hire authority.

(2) Noncompetitive appointment based on a special authority in law or Executive order (but not including transfer and reinstatement) made in accordance with all requirements applicable to new appointments under that authority.

(3) Advancement in accordance with part 335 of this chapter up to any General Schedule grade the employee previously held under nontemporary appointment in the competitive or excepted service.

(4) Advancement of an employee from a non-General Schedule position to a General Schedule position unless the employee held a General Schedule position under nontemporary appointment in the executive branch within the previous 52 weeks.

(5) Advancement of an individual whose General Schedule service during the previous 52 weeks has been totally under temporary appointment.

(6) Advancement of an employee under a training agreement established in accordance with OPM's operating manuals. However, an employee may not receive more than two promotions in any 52-week period solely on the basis of one or more training agreements. Also, only OPM may approve a training agreement that provides for consecutive promotions at rates that exceed those permitted by § 300.604 of this part.

(7) Advancement to avoid hardship to an agency or inequity to an employee in an individual meritorious case but only with the prior approval of the agency head or his or her designee. However, an employee may not be promoted more than three grades during any 52-week period on the basis of this paragraph.

(8) Advancement when OPM authorizes it to avoid hardship to an agency or inequity to an employee in individual meritorious situations not defined, but consistent with the definitions, in § 300.602 of this part.

[56 FR 23002, May 20, 1991, as amended at 66 FR 66710, Dec. 27, 2001]

#### § 300.604 Restrictions.

The following time-in-grade restrictions must be met unless advancement is permitted by § 300.603(b) of this part:

(a) *Advancement to positions at GS-12 and above.* Candidates for advancement to a position at GS-12 and above must have completed a minimum of 52 weeks in positions no more than one grade lower (or equivalent) than the position to be filled.

(b) *Advancement to positions at GS-6 through GS-11.* Candidates for advancement to a position at GS-6 through GS-11 must have completed a minimum of 52 weeks in positions:

(1) No more than two grades lower (or equivalent) when the position to be filled is in a line of work properly classified at 2-grade intervals; or

(2) No more than one grade lower (or equivalent) when the position to be filled is in a line of work properly classified at 1-grade intervals; or

(3) No more than one or two grades lower (or equivalent), as determined by the agency, when the position to be

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filled is in a line of work properly classified at 1-grade intervals but has a mixed interval promotion pattern.

(c) *Advancement to positions up to GS-5.* Candidates may be advanced without time restriction to positions up to GS-5 if the position to be filled is no more than two grades above the lowest grade the employee held within the preceding 52 weeks under his or her latest non-temporary competitive appointment.

### § 300.605 Creditable service.

(a) All service at the required or higher grade (or equivalent) in positions to which appointed in the Federal civilian service is creditable towards the time periods required by § 300.604 of this part, except as provided in paragraph (c) of this section. Creditable service includes competitive and excepted service in positions under the General Schedule and other pay systems, including employment with a nonappropriated fund instrumentality. Service while on detail is credited at the grade of the employee's position of record, not the grade of the position to which detailed. Also creditable is service with the District of Columbia Government prior to January 1, 1980 (or prior to September 26, 1980, for those District employees who were converted to the District personnel system on January 1, 1980).

(b) Service in positions not subject to the General Schedule (GS) is credited at the equivalent GS grade by comparing the candidate's rate of basic pay with the representative rate (as defined in § 351.203 of this chapter) of the GS position in effect when the non-GS service was performed. The equivalent GS grade is the GS grade with a representative rate that equals the candidate's rate of basic pay. When the candidate's rate of basic pay falls between the representative rates of two GS grades, the non-GS service is credited at the higher grade.

(c) In applying the restrictions in § 300.604 of this part, prior service under temporary appointment at a level above that of a subsequent non-temporary competitive appointment is credited as if the service had been performed at the level of the non-temporary appointment. This provision applies until the employee has served

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in pay status for 52 weeks under non-temporary competitive appointment; thereafter, the service is credited at its actual grade level (or equivalent).

### § 300.606 Agency authority.

An agency may expand on these restrictions consistent with the intent of this subpart or may adopt similar policies to control promotion rates of employees not covered by this subpart.

## Subpart G—Statutory Bar to Appointment of Persons Who Fail To Register Under Selective Service Law

SOURCE: 52 FR 7400, Mar. 11, 1987, unless otherwise noted.

### § 300.701 Statutory requirement.

Section 3328 of title 5 of the United States Code provides that—

(a) An individual—

(1) Who was born after December 31, 1959, and is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453); and

(2) Who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual, shall be ineligible for appointment to a position in an executive agency of the Federal Government.

(b) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication within the Office of determinations of whether a failure to register was knowing and willful. Such procedures shall require that such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing nor willful.

### § 300.702 Coverage.

Appointments in the competitive service, the excepted service, the Senior Executive Service, or any other civil service personnel management system in an executive agency are covered by these regulations.

### § 300.703 Definitions.

In this subpart—